IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL APPLICATION NO. 54 OF 2003.
IN
FIRST APPEAL NO. 63 OF 2003.

1. Sagar Co-operative Housing Society Limited with regd. office at Club House, Sagar Society, Dona Paula.
2. T.S. Satya Narayan Rao, (since deceased). ... Applicants.

Versus

Dr. Adriano Afonso, through his attorney Dr. Skoda Afonso, r/at Campal, Panaji. ... Respondent.

Mr. S.G. Dessai, Senior Advocate with Mr. Sudin Usgaonkar, Advocate for the Applicants.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 20th March 2003.

ORAL ORDER.

This application arises in First Appeal No. 63 of 2003, which has been filed by the appellants/original defendants against the Judgment and Decree, dated 30th August 2002, passed by the Civil Judge, Senior Division, Panaji, in Special Civil Suit No. 5/86/A. By the aforesaid Judgment and Decree, the learned trial Court had partly decreed the suit filed by the respondent/plaintiff and granted the respondent/plaintiff the decree of mandatory injunction directing the present appellants/defendants to give a 15 metres wide access touching the north-eastern boundary

of the respondent/plaintiff's property as was marked and delineated in the plan at Exhibit P.W.1/B for going to the public road and further directed the appellants/defendants not to cause any obstruction while using the said access of 15 metres. The other reliefs, which were prayed for, were rejected by the learned trial Court. The First Appeal which was filed by the appellants/defendants came to be admitted by this Court on 27th February 2003.

2. The Civil Application has been filed by the applicants/defendants praying for interim orders of this Court staying the effect and operation of the Decree of the learned trial Court granting 15 metres access to the respondent/plaintiff. The grounds in support of the application for stay are set out in paragraph 4 thereof, which, inter alia, read as under:-

> "4a) I say that the plans were approved and construction of bungalows of the society were made prior to 1991.
>
> b) During the pendency of the suit a notification was published by the Central Government dated 19/02/1991 Coastal Zone Regulation.
>
> c) According to that, as far as estuary of river Zuari, no development is permissible within a distance of 100 metres line from the High Tide line.
>
> d) The plot of the Plaintiff/Respondent falls within the No Development Zone.

e) For this reasons also no construction is possible within the plots of the Respondent.

f) The Applicant obtained the above information very recently from the report given by Mr. Vinod Kapoor which is annexed herewith and which was passed to the Applicant very recently by the said member of the society Mr. Vinod Kapoor. Copy of the same is annexed.

g) Said Mr. Vinod Kapoor informed me that in connection with fixation of correct High Tide Line, the matter was agitated before this Hon'ble High Court by said Vinod Kapoor and the decision of the High Court was challenged before the Supreme Court and the same is pending before the Supreme Court. Leave has been granted.

h) The Applicant shall move proper amendment to the written statement."

The first ground states that the applicants/defendants had got their plans approved for the construction of the bungalows of the society prior to 1991. The second ground and the other related grounds state that the respondent/plaintiff cannot legally construct any bungalow/farm house in the plot as the same is in the No Development Zone. In ground g) it is stated that a decision of this Court rendered in a Writ Petition is pending before the Apex Court. Apart from these grounds Mr. Dessai, the learned senior counsel appearing on behalf of the applicants/defendants, has urged that in view of Section 4 of the Foreign Exchange Management Act the respondent/plaintiff, who has been residing abroad for the last many years, having acquired a foreign

citizenship, is not entitled to own and possess any bungalow/farm house in India. Mr. Dessai has also submitted that if stay to the Decree is not granted, it would virtually amount to creating a new situation, that is, disturb the status quo which was existing since the year 1985 – when the suit came to be filed.

3. Mr. Lotlikar, the learned senior counsel appearing on behalf of the respondent/plaintiff, has urged before me that pursuant to the Decree passed by the learned trial Court, the respondent/plaintiff had approached the authorities and has got the plans for construction sanctioned and the respondent/plaintiff has also been granted the development permission. The aforesaid suit came to be filed by the respondent/plaintiff as the plot of the respondent/plaintiff was landlocked. The status quo had obviously been maintained since 1985-1986 as there was no access for the respondent/plaintiff. Countering the submission of Mr. Dessai, the learned senior counsel for the appellants/defendants, that the respondent/plaintiff is a foreign National, it is submitted by Mr. Lotlikar, the senior counsel on behalf of the respondent/plaintiff, that there are no pleadings to that effect at all in the application and obviously Section 4 would be wholly inapplicable in the absence of necessary pleadings. There is no material on record to

suggest that respondent is a foreign National. Further, it is stated by Mr. Lotlikar, learned counsel for the respondent/plaintiff, whether the proposed construction of the respondent/plaintiff is impermissible, as the area has been declared as a No Development Zone, is a matter for the authorities to take up and since the Court is not ceased with the matter, it is for the authorities concerned to decide whether the construction of the respondent/plaintiff is illegal.

4. I have given my anxious considerations to the rival submissions advanced by the learned counsel for the parties. Mr. Dessai, the learned senior counsel appearing for the applicants/defendants has made substantive submissions as regards the merits of the Judgment and Decree of the learned trial Court. His submissions regarding the maintainability of the suit as well as the correctness and proprietary of the Decree passed by the learned trial Court cannot be considered at this stage as it would be wholly inappropriate to decide, even prima facie, regarding the correctness or otherwise of the Judgment and Decree of the learned trial Court.

5. The respondent/plaintiff has a decree in his favour which directs the appellants/defendants to provide a 15 metres access. By complying with the

Decree, apparently neither irreparable loss is being caused to the appellants/defendants nor an irreversible situation would be created. The execution of the Decree by providing the 15 metres access does not entail demolition of any structure nor does it create an irreparable loss in case of the appellants/defendants succeeding in the appeal. On the contrary, the respondent/plaintiff would be put to a substantial loss in the event the stay is granted as the appellant/plaintiff has obtained construction licence which is valid for one year. The plot of the appellants/defendants is landlocked and obviously if stay is granted the respondent/plaintiff would be put in the same condition as it was existing when the respondent/plaintiff filed the suit.

6. Therefore, in my considered opinion, this is not a fit case in which an interim stay needs to be granted. However, the interest of the appellants/defendants could be subserved by expediting the hearing of the appeal. The appellant is permitted to file a private paper book and thereafter move an application for early hearing, if he chooses to do so.

7. The Civil Application is, accordingly, dismissed with no order as to costs.

8. On instructions Mr. Dessai, learned senior counsel appearing on behalf of the appellant, states that the appellant intends to file a Special Leave Petition to the Supreme Court against the rejection of the application for stay. In the interest of justice the respondent to maintain status quo for a period of two weeks from today.

(P.V. HARDAS)
JUDGE.

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